

REMARKS

Applicants have carefully considered the March 25, 2004 Office Action, and the amendments above together with the comments that follow are presented in a bona fide effort to address all issues raised in that Action and thereby place this case in condition for allowance. Claims 1-13 were pending in this application. Claims 2, 6-8 and 10-13 were withdrawn from consideration pursuant to the provisions of 37 C.F.R. § 1.142(b).

In response to the Office Action dated March 25, 2004, claims 1-13 have been canceled and new claims 14-24 have been added. Care has been exercised to avoid the introduction of new matter. Adequate descriptive support for the present Amendment should be apparent throughout the originally filed disclosure as, for example, the depicted embodiments and related discussion thereof in the written description of the specification.

Applicants submit that the present Amendment does not generate any new matter issue. Entry of the present Amendment is respectfully solicited. It is believed that this response places this case in condition for allowance. Hence, prompt favorable reconsideration of this case is solicited.

Initially, Applicants respectfully request that the U.S. Patent & Trademark Office change its records to include the correct Attorney Docket Number for the present application. The correct Attorney Docket Number is 62807-041.

Claims 1, 3-5 and 9 were rejected under 35 U.S.C. § 102(e) as being anticipated over Yonetsu et al. (U.S. Pat. No. 6,506,513, hereinafter "Yonetsu"). Claims 1, 3-5 and 9 have been canceled and, therefore, the rejection is moot. Moreover, new claims 14-24 are free from the applied art for the reasons set forth *infra*.

Claims 1, 3-5 and 9 were rejected under 35 U.S.C. § 102(a) as being anticipated over Hikuma (JP 2000-268835, hereinafter “Hikuma”). Claims 1, 3-5 and 9 have been canceled and, therefore, the rejection is moot. Moreover, new claims 14-24 are free from the applied art for the reasons set forth *infra*.

The factual determination of lack of novelty under 35 U.S.C. § 102 requires the identical disclosure in a single reference of each element of a claimed invention, such that the identically claimed invention is placed into the possession of one having ordinary skill in the art. There are significant differences between the claimed subject matter and the devices disclosed by Yonetsu and Hikuma that would preclude the factual determination that either document identically describes the claimed equipment within the meaning of 35 U.S.C. § 102.

As recited in new independent claim 14, the fuel cell power generation equipment comprises an anode for oxidizing liquid fuel, a cathode for reducing oxygen, an electrolyte membrane/electrode assembly (MEA) provided between the anode and the cathode, a fuel container for holding the liquid fuel, and a air vent hole which has a gas/liquid separation function and is provided on a wall surface of a fuel container. A distinguishing feature is that the air vent hole has a gas/liquid separation function and is provided on a wall surface of a fuel container, as recited in new independent claim 14.

Yonetsu is directed to a so-called laminate type direct methanol fuel cell (DMFC) in which MEAs are laminated approximately in a vertical direction to the surface of MEA. An air vent hole is provided on the surface of a fuel tank to exhaust carbon dioxide gas generated on an anode.

In the equipment of claim 14, the air vent hole “has a gas/liquid separation function” so that the fuel container has an omnidirectional property. As disclosed, the fuel does not spill from

the omnidirectional vent hole even when the vent hole faces downward. See specification at page 45, lines 11-15. In contrast, Yonetsu does not disclose or suggest such structure or advantage. Rather, Yonetsu discloses an air vent hole that is provided on the surface of a fuel tank to exhaust carbon dioxide gas generated on an anode. There is no gas/liquid separation function. Accordingly, Yonetsu fails to identically describe the claimed subject matter within the meaning of 35 U.S.C. § 102 and, therefore, new claims 14-24 are novel over that patent.

Hikuma is directed to a so-called flat type DMFC in which MEAs are laminated approximately in horizontal direction of the surface of MEA. Hikuma does not at all disclose any mechanism to exhaust carbon dioxide gas generated on an anode. Accordingly, Hikuma fails to disclose or remotely suggest an air vent hole or such a vent having a gas/liquid separation function. Thus, claims 14-24 are novel over the patent since Hikuma fails to identically describe the claimed subject matter within the meaning of 35 U.S.C. § 102.

Claims 1, 3-5 and 9 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent App. No. 10/166,263 (hereinafter the '263 Application). This rejection is respectfully traversed. Claims 1, 3-5 and 9 have been canceled and, therefore, the rejection is moot. Moreover, claims 1-5 (as well as claims 6-10) were canceled by way of a preliminary amendment in the '263 application. Rather, claims 11-13 remain pending in the '263 application. Further, in accordance with M.P.E.P. § 804 I(B), since the provisional double patenting rejection is the sole remaining rejection of record, the Examiner is requested to withdraw the provisional rejection and permit the present application to issue as a patent.

It is believed that all pending claims are now in condition for allowance. Applicants therefore respectfully request an early and favorable reconsideration and allowance of this

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application. If there are any outstanding issues which might be resolved by an interview or an Examiner's amendment, the Examiner is invited to call Applicants' representative at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Brian K. Seidleck", written in a cursive style.

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